

CHEN, LEONG & COMPANY

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v.

SRI NAKA JAYA ENTERPRISE SDN BHD

COURT OF APPEAL, PUTRAJAYA

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GOPAL SRI RAM JCA

AHMAD MAAROP JCA

KANG HWEE GEE J

[CIVIL APPEAL NO: P-02-714-2003]

2 MARCH 2009

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LEGAL PROFESSION: *Solicitor's undertaking - Construction of undertaking - Claim for interest on monies held by solicitor in respect of a conveyancing transaction - Whether solicitor acting as stakeholder at time of receipt of monies*

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This was an appeal by the appellant, a firm of solicitors, against the order of the High Court finding the appellant liable to pay interest on monies held by it in respect of a conveyancing transaction. The only issue before the High Court was whether the appellant was acting as a stakeholder at the time it received the money in question. The High Court, both before the registrar and the judge on appeal, held that the appellant was not, resulting in the present appeal.

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Held (dismissing the appeal)

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Per Gopal Sri Ram JCA delivering the judgment of the court:

- (1) The court must have regard to all the circumstances of a particular case when determining whether the receiver of money, be it as a solicitor or an estate agent, holds the same as a stakeholder. That was the exercise that the High Court carried out at both levels. It was crystal clear from the documents presented to the court below that the appellant did not receive the money in question as a stakeholder. In those circumstances, the claim for interest was plainly sustainable. *Toh Theam Hock v. Kemajuan Perwira Management Corp Sdn Bhd* (foll).

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A **Bahasa Malaysia Translation Of Headnotes**

- Ini adalah rayuan oleh perayu, sebuah firma peguamcara, terhadap perintah Mahkamah Tinggi yang mendapati bahawa perayu seharusnya membayar bunga atas wang yang dipegang olehnya
berhubung dengan suatu transaksi pemindahhakkan. Isu tunggal di hadapan Mahkamah Tinggi ialah sama ada perayu bertindak sebagai pemegang amanah harta pada masa ia menerima wang tersebut. Mahkamah Tinggi, kedua-duanya di hadapan pendaftar dan hakim atas rayuan, mendapati bahawa perayu bukan sedemikian, mengakibatkan rayuan semasa.

Diputuskan (menolak rayuan)

Oleh Gopal Sri Ram HMR menyampaikan penghakiman mahkamah:

- (1) Mahkamah mesti menimbangkan kesemua keadaan-keadaan sesuatu kes apabila menentukan sama ada penerima wang, meskipun sebagai peguamcara atau agen estet, memegang yang sama seperti pemegang amanah harta. Itu merupakan penimbangan yang dilaksanakan oleh Mahkamah Tinggi pada kedua-dua peringkatnya. Ia adalah amat jelas dari dokumen-dokumen yang dikemukakan di mahkamah bawahan bahawa perayu tidak menerima wang tersebut sebagai pemegang amanah harta. Dalam keadaan-keadaan sebegitu, tuntutan untuk bunga jelas boleh dibenarkan. *Toh Theam Hock v. Kemajuan Perwira Management Corp Sdn Bhd* (diikuti).

Case(s) referred to:

Sorrell v. Finch [1977] AC 728 (**refd**)

Toh Theam Hock v. Kemajuan Perwira Management Corporation Sdn Bhd [1987] 2 CLJ 26; [1987] CLJ (Rep) 400 SC (**foli**)

For the appellant - Kanesan Muthusami; M/s M Kanesan & Assoc

For the respondent - M Thayalan; M/s Ban Eng, Anual & Foong

[*Appeal from High Court, Pulau Pinang; Civil Suit No: 22-1046-1998 (MT.1)*]

Reported by Suresh Nathan

JUDGMENT

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Gopal Sri Ram JCA:

[1] This is the judgment of the court.

[2] This appeal is directed against the order of the High Court in Penang finding the appellants liable to pay interest on monies held by them in respect of a conveyancing transaction. The relevant facts are as follows.

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[3] The appellant is a firm of solicitors. By a letter dated 13 June 1997 written by the firm of Saw & Teoh, Advocates and Solicitors, a sum of RM1,629,876.05 was paid to the appellants on their undertaking to – and we quote – “forthwith forward us both the original issue documents of title to the above referred properties before remitting the said sum to the vendors”. There was also a provision for retention of real property gain tax. It is not in dispute that the transaction was terminated on 24 July 1998. In the meantime the cheques that had been sent under cover of the letter of 13 June 1997 had cleared on 16 June 1997. The appellant refunded the principal sum and interest on it from the date of termination until the date of settlement. They however disputed the claim for interest for the period between 16 June 1997 and 24 July 1998.

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[4] The primary ground on which the defendant’s claim was resisted in the court below was that the appellants had received the sum in question as a stakeholder. In repeating before us the submission he made in the court below, learned counsel for the appellant relies on the case of *Toh Theam Hock v. Kemajuan Perwira Management Corporation Sdn Bhd* [1987] 2 CLJ 26; [1987] CLJ (Rep) 400 where the Supreme Court adopted the following passage in *Sorrell v. Finch* [1977] AC 728:

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If an estate agent or solicitor, being duly authorized in that behalf, receives a deposit ‘as stakeholder’, he is under a duty to hold it *in medio* pending the outcome of a future event. He does not hold it as agent for the vendor, nor as agent for the purchaser. He holds it as trustee for both to await the event: see *Skinner v. Trustee of Property of Reed* ([1967] 2 All ER 1286 at 1289), per Cross J. Until the event is known, it is his duty to keep it in his own hands; or to put it on deposit at the bank; in which case he is entitled to keep for himself any interest that accrues to it; see

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- A *Harington v. Hoggart* ([1830] 1 B & Ad. 577). If the purchaser should become entitled to the return of his deposit, he must sue the estate agent or solicitor for it: see *Eltham v. Kingsman* ([1818] 1 B. & Ad. 683) and *Hampden v. Walsh* ([1876] 1 QBD 189). He cannot sue the vendor, because the vendor has never received it, or become entitled to receive it.
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- C [5] The only issue before the High Court was whether, at the time the appellants received the money in question, they were acting as a stakeholder. The High Court both before the registrar and learned judge on appeal held that the appellants were not a stakeholder at the material time. In our respectful view that finding is consistent with the terms of the letter dated 13 June 1997 and the surrounding circumstances of the case. One particular fact that stands out is that at the time of the receipt of the money no appointment as stakeholder had been made. The transaction was
- D at an early stage. There is material on record to show that the vendor was not capable of making title to the subject property after the execution of the relevant agreement. *Toh Theam Hock v. Kemajuan Perwira Management Corporation Sdn Bhd* is also authority for the proposition that the court must have regard to all the
- E circumstances of a particular case when determining whether the receiver of money, be it as a solicitor or an estate agent, holds the same as a stakeholder. That is the exercise that the High Court carried out at both levels.
- F [6] It is crystal clear from the documents presented to the court below that the money in question was not received by the appellants as stakeholder. In those circumstances the claim for interest was plainly sustainable.
- G [7] For the reasons already given we find ourselves in agreement with the High Court. The appeal is therefore dismissed with costs. The deposit shall be paid out to the respondent to account of its taxed costs.

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